STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

NORTH COUNTY COMMUNICATIONS CORPORATION,	)	
Complainant,	)	
vs.	)	**Docket No. 07-0428**
VERIZON NORTH INC. and VERIZON SOUTH, INC.,	)	
Respondents.	)	

VERIZON'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS

Verizon North Inc. and Verizon South Inc. (collectively, "Verizon"), by and through their attorneys, hereby respectfully submit their Reply in support of their August 2, 2007 Motion to Dismiss pursuant to the schedule set in the Administrative Law Judge's ("ALJ") August 15, 2007 order. Verizon's Reply addresses the responses filed by both North County Communications Corporation ("NCC") and the Staff of the Illinois Commerce Commission ("Staff").[1]

Introduction

This proceeding arises out of NCC's efforts to force Verizon to purchase a service that Verizon does not want to buy from NCC. NCC allegedly wants to create, at some unknown point in the future, a service whereby it would sell its customers' Calling Name ("CNAM") and Line Information Database ("LIDB") data directly to Verizon. Because

[1] *See generally* "Response of the Staff of the Illinois Commerce Commission to Verizon North Inc. and Verizon South Inc.'s Motion to Dismiss," dated August 16, 2007 ("Staff Response") and "North County's Opposition to Verizon's Motion to Dismiss," dated August 16, 2007 ("NCC Response").

Verizon already contracts to purchase NCC's CNAM/LIDB data from a third party aggregator at rates more favorable than those proposed by NCC, Verizon declined NCC's offer. In response, NCC filed this proceeding on the grounds that it is somehow anticompetitive for Verizon not to purchase such services from NCC given that NCC has a contract to buy them from Verizon. This, in a nutshell, is the contorted basis for NCC's July 26, 2007 Verified Complaint ("Verified Complaint").

Ignoring for the moment that NCC does not even presently have the capability to offer the service at issue, there is no set of facts under which NCC may legally force Verizon to purchase a service that Verizon does not wish to buy, whether under 220 ILCS 5/13-514, or any other state or federal statute. As a result, even taking all facts alleged in the Verified Complaint as true (as required on a motion to dismiss), dismissal is warranted.

Discussion

Both NCC and Staff recommend denial of Verizon's Motion to Dismiss ("Verizon Motion"). Staff does so while noting that the Verizon Motion is not "without merit."[2] Yet, both Staff and NCC misinterpret the applicable law. In addition, NCC improperly seeks to recharacterize the purported "factual" basis for its claims through its brief in an attempt to avert dismissal. Yet, no amount of gamesmanship and hyperbole can refute the fact that the Verified Complaint fails to present any cause of action under 220 ILCS 5/13-514, which requires that any actions taken or refusals claimed thereunder be "***unreasonable***." Nor does the Verified Complaint present any issues that are ripe for adjudication. As detailed below, the Verified Complaint should be dismissed.

[2] *See* Staff Response at ¶ 3.

I. Legal Standard on a Motion to Dismiss

Staff repeatedly concedes the eventual validity of Verizon's position after the taking of evidence, but recommends denial of the Verizon Motion on the basis that "[d]ismissal on the pleadings is warranted only where it is clearly apparent that no set of facts can be proved that would allow the plaintiff to recover." *See* Staff Response at ¶ 5. Staff fails to acknowledge that although well-pled allegations of a complaint are taken as true for purposes of a motion to dismiss, conclusory allegations of law and fact contained in a complaint are not. *See, e.g.*, *Shaper v. Bryan*, 371 Ill.App.3d 1079, 1086 (1st Dist. 2007); *White v. Riolo*, 368 Ill.App.3d 278, 282 (1st Dist. 2006). A plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action, not simply conclusions. *See Marshall v. Burger King Corp.*, 222 Ill.2d 422, 429 (2006). "'A pleading that merely paraphrases the elements of a cause of action in conclusory terms is not sufficient.'" *See Landers-Scelfo v. Corporate Office Systems, Inc.*, 356 Ill.App.3d 1060, 1065 (2nd Dist. 2005). If a complaint does not state a cause of action after disregarding legal and factual conclusions, a motion to dismiss should be granted. *See Rockford Memorial Hospital v. Havrilesko*, 368 Ill.App.3d 115, 120 (2nd Dist. 2006).

Both Staff and NCC ignore these vital tenets of Illinois law. As such, Staff's reliance on the conclusory "facts" and unsupported legal conclusions alleged in the Verified Complaint as grounds for denial of Verizon's motion to dismiss is inappropriate. Only *well-pled* allegations of law and fact must be treated as true for purposes of a motion to dismiss, and where such allegations are conclusory in nature, dismissal is appropriate. *See, e.g., Rockford Memorial, supra,* 368 Ill.App.3d 115 (affirming dismissal of various billing claims because complaint lacked sufficient factual allegations

to support conclusory allegations of requisite elements of causes of action); *White, supra,* 368 Ill.App.3d 278 (dismissal of complaint under consumer fraud act appropriate where allegations of complaint lacked sufficient specificity and particularity regarding damages); *Kopka v. Kamensky and Rubenstein*, 354 Ill.App.3d 930 (1st Dist. 2004) (dismissal of complaint affirmed where plaintiff failed to plead specific facts supporting allegations of negligence and breach of duty); *Anderson v. Vanden Dorpel*, 172 Ill.2d 399 (1996) (allegations of plaintiff's own subjective belief, without facts to support it, are merely conclusory and insufficient to withstand dismissal).

As discussed below, the Verified Complaint's conclusory allegations do not meet the pleading standard required to withstand dismissal.

II. Legal Standard for Claims Raised Under 220 ILCS 5/13-514

At ¶ 33 of the Verified Complaint, NCC sets forth the provisions of Section 13-514 of the Illinois Public Utilities Act that are "pertinent" to this case:

> Section 13-514. Prohibited Actions of Telecommunications Carriers. A telecommunications carrier shall not knowingly impede the development of competition in any telecommunications service market. The following prohibited actions are considered *per se* impediments to the development of competition; however, the Commission is not limited in any manner to these enumerated impediments and may consider other actions which impede competition to be prohibited:
>
> (1) ***unreasonably*** refusing or delaying interconnections or collocation or providing inferior connections to another telecommunications carrier;
>
> (2) ***unreasonably*** impairing the speed, quality, or efficiency of services used by another telecommunications carrier;
>
> …
>
> (5) ***unreasonably*** refusing or delaying access by any person to another telecommunications carrier;
>
> (6) ***unreasonably*** acting or failing to act in a manner that has a substantial adverse effect on the ability of another telecommunications carrier to provide service to its customers;

…

(8) violating the terms of the or ***unreasonably*** delaying implementation of an interconnection agreement entered into pursuant to Section 252 of the Federal Telecommunications Act of 1996 in a manner that unreasonably delays, increases the cost, or impedes the availability of telecommunications services to its customers. (Emphasis added).

As reflected in the Italicized references above, for each and every provision of Section 13-514 under which NCC purports to state a claim, it is insufficient simply to allege that Verizon has taken the actions or inactions cited therein, as the Complaint does. Instead, NCC must allege specific facts demonstrating that Verizon's conduct was ***unreasonable***. Simply repeating the word "unreasonable" because it is in the statute does not suffice. *See, e.g., Landers-Scelfo, supra,* 356 Ill.App.3d at 1065. NCC has not carried its burden to allege specific facts demonstrating that Verizon's decision not to purchase NCC's CNAM/LIDB data directly from NCC, at the rates, terms and conditions proposed by NCC, was in any way unreasonable.

To the contrary, the Verified Complaint contains factual allegations that demonstrate the reasonableness of Verizon's response. For example, the Verified Complaint alleges that Verizon reviewed NCC's proposal at NCC's request, and that the parties discussed it "on multiple occasions." Verified Complaint at ¶¶ 19-20. The Verified Complaint also alleges that Verizon explained that it was declining NCC's proffered service because Verizon "'has concluded that it is far more cost-effective to use third-party aggregators than to enter into direct arrangements with a multitude of individual carriers.'" *Id.* at ¶ 23. The Verified Complaint thus admits that Verizon's decision not to purchase NCC's CNAM/LIDB data directly from NCC on the rates, terms and conditions proposed was made, after due consideration and discussion, on a valid, reasonable and non-discriminatory basis – namely, the economics of the business and the

fact that other providers of this data offer more favorable rates. Verizon owes a duty to its shareholders to operate as efficiently as possible, including purchasing goods and services at the most competitive rate available. In this case, the Verified Complaint alleges that the rate offered by NCC is not competitive with the rates offered by the third party aggregators who sell NCC's data.[3]

The allegations of the Verified Complaint do not support NCC's assertion that Verizon's decision not to accept NCC's offer to sell its CNAM/LIDB information directly to Verizon at the price proposed by NCC violates 220 ILCS 5/13-514. Even taken as true, they do not demonstrate that Verizon acted unreasonably. The Verified Complaint lacks any well-pled allegations establishing the unreasonableness of Verizon's position, and in fact, underscores that Verizon had valid reasons to decline NCC's offer.

III. The Federal Telecommunications Act of 1996 Does Not Authorize Carriers to Compel the Purchase or Sale of CNAM/LIDB Database Services

NCC relegates its response to Verizon's arguments based on the FCC's *Triennial Review Order*[4] to a four-line footnote, arguing that the "FCC in no way sanctioned ILEC discrimination in the purchase of CNAM, LIDB or other call related databases." *See* NCC Response at p. 7, FN 4. This is a purposeful mischaracterization of Verizon's arguments relating to the *Triennial Review Order*. As an aside, Verizon notes that the FCC similarly in no way "sanctioned" compulsory purchase of CNAM/LIDB data upon the demand of a putative seller of such data.

---

[3] Verizon does not sell NCC's CNAM/LIDB data, and thus the rates NCC pays to Verizon for Verizon's CNAM/LIDB data are irrelevant.

[4] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003); *corrected by* Errata, 18 FCC Rcd 19020 (2003), *vacated and remanded in part, affirmed in part, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004), *cert. denied*, 125 S.Ct. 313, 316, 345 (2004) ("*Triennial Review Order*").

Staff seems to understand Verizon's point – that in eliminating CNAM and LIBD database access from the list of unbundled network elements that incumbent providers are required to sell to competitors at TELRIC rates in light of the highly competitive market from which to obtain these offerings, the FCC recognized that purchasers of these offerings can obtain them from a multitude of providers, and need not obtain them from any specific provider. However, Staff then theorizes, without citation, that state law "may" require more than federal law. *See* Staff Response at ¶ 8.

Staff apparently forgets that the Commission was just last year overturned by a federal court after taking a similar stance regarding other unbundling requirements eliminated by the *Triennial Review Order* and the FCC's subsequent order on remand. *See Illinois Bell Telephone Co. v. O'Connell-Diaz et al.,* 2006 U.S. Dist. LEXIS 70221 (N.D. Ill. Sept. 28, 2006). The Seventh Circuit Court of Appeals has repeatedly overturned such utility commission rulings. *See, e.g.*, *Indiana Bell Tel. Co. v. Indiana Utility Regulatory Commission*, 359 F.3d 493 (7th Cir. 2004) (IURC's order imposing statewide remedy plan outside of the Act's negotiation/arbitration process was preempted by the Act); *Wisconsin Bell, Inc. v. Bie*, 340 F.3d 441 (7th Cir. 2003) (PSCW's order requiring Wisconsin Bell to file tariffs with price and other terms for interconnection was preempted by the Act); *AT&T Communications of Illinois, Inc. v. Illinois Bell Tel. Co.*, 349 F.3d 402 (7th Cir. 2003) (Illinois statute dictating method for setting rates for interconnection was preempted by the Act).

No fair reading of the FCC's elimination of the requirement that incumbent providers sell their CNAM/LIDB data to competitive providers results in the conclusion that if incumbent providers voluntarily elect to sell that data to competitive providers

upon request (as here; *see* Verified Complaint at ¶ 11), those competitive providers can, in turn, compel incumbents to purchase the competitors' CNAM/LIDB data at all, much less at the same rates. Neither Staff nor NCC musters a single legal citation of any kind, from any jurisdiction, that could conceivably support the existence of a legal obligation on Verizon's part. Any interpretation of the *Triennial Review Order* that would morph the FCC's termination of incumbent providers' obligation to ***sell*** their CNAM/LIDB data ***to*** competitors into an obligation for incumbent providers to ***buy*** such data ***from*** competitive providers is legally unsustainable.

What is clear is that neither the Act nor the FCC has ever mandated that uninterested purchasers buy CNAM/LIDB data from overzealous sellers. In the past, the FCC required incumbents to sell such data to competitors as unbundled network elements, but eliminated that requirement in light of the robust array of competitive options by which to obtain that information. Thus, not only is Verizon not required to sell its CNAM/LIDB data to NCC (although Verizon has consented to do so), Verizon is most certainly not required to buy NCC's CNAM/LIDB data, much less buy it exclusively from NCC. Any assertion by NCC or Staff to the contrary is totally unfounded, particularly given that more competitive offerings are available through aggregators. Such interpretations of the law would turn the FCC's recognition of the fully-competitive market for such offerings on its head.

IV. NCC Fails to State a Claim Under the Illinois Public Utilities Act

Ignoring Verizon's point-by-point discussion of why NCC has failed to state a claim under any of the identified provisions of 220 ILCS 5/13-514 (*see* Verizon Motion at ¶¶ 10-14), NCC simply reiterates its allegations of improper conduct, although it appears to drop its claim of a violation of 220 ILCS 5/13-514(8).[5] *See* NCC Response at ¶¶ 13-18.

Realizing that its factual allegations cannot sustain its claims, NCC attempts to recharacterize the basis of its Verified Complaint from Verizon's unwillingness to purchase CNAM/LIDB information for NCC's customers *directly from NCC, under the specific rates, terms and conditions proposed by NCC*, as alleged in the Verified Complaint, to a broader, blanket "refusal to perform LIDB/CNAM dips of NCC information," as newly asserted in the NCC Response. *Compare* Verified Complaint at ¶¶ 19-21 *with* NCC Response at ¶¶ 1, 14, 15, 16, 24 (4 separate repetitions) and 25.[6] This revisionist recasting of NCC's claims is contradicted on its face by allegations of the Verified Complaint, the Verizon Answer, and the NCC Response, all of which state that Verizon already contracts with third parties to obtain "dips," or queries, of NCC customers' CNAM/LIDB data. *See, e.g.*, Verified Complaint at ¶¶ 26-28; Verizon Answer at ¶ 24; NCC Response at ¶¶ 3, 20, 22. As such, there can be no diminished

[5] The NCC Response does not claim any violation of this subsection, which relates to breaching interconnection agreements. The NCC Response also states that "[t]he contractual obligations of Verizon to NCC under the existing interconnection agreement ... have nothing to do with the causes of action set forth in NCC's Complaint." NCC Response at ¶ 19.

[6] Other portions of the NCC Response properly acknowledge that NCC's claim is *not* that Verizon blanketly refuses to purchase NCC's customers' CNAM/LIDB data, but rather has merely declined to do so under the rates, terms and conditions proposed by NCC. *See, e.g.*, NCC Response at ¶¶ 3, 7, 19.

service, because Verizon has secured arrangements for "dipping" NCC's CNAM/LIDB information.[7]

Moreover, NCC argues that Verizon wishes to continue purchasing NCC's data from third party aggregators. *See* NCC Response at ¶ 3. Given this, the only way the services about which NCC is ostensibly so concerned – Verizon's customers' ability to place collect third party billed calls to NCC's customers, and to see NCC's customers' names on the Verizon customers' Caller ID units[8] – would be interrupted would be for NCC to stop selling its CNAM/LIDB data to third parties (a decision that lies solely within NCC's discretion), and for Verizon to decline to purchase that data directly from NCC thereafter. Otherwise, Verizon would continue to be able to perform "dips" of NCC's CNAM and LIDB information, and all services would function.

Similarly, NCC's assertion that Verizon has "required" that NCC "use a Verizon-preferred and Verizon-selected third party vendor" of CNAM/LIDB data (Verified Complaint at ¶ 35) cannot withstand dismissal. This allegation is so conclusory in nature that it cannot be deemed well-pled. NCC offers no facts to support this assertion, and indeed, there is no credible basis upon which to allege that Verizon somehow possesses exclusive contracting authority for the sale of NCC's CNAM/LIDB information. Verizon has absolutely no control over with whom NCC enters into contracts, does not act as NCC's agent for entering into such contracts, and has no ability to force NCC to enter into contracts of Verizon's choosing. The Verified Complaint does not, and could not,

[7] Verizon reiterates that to the extent that NCC customers' information does not show up on Verizon end users' Caller ID units, or to the extent that Verizon end users cannot place collect or third party billed calls to NCC's customers, any standing to raise such claims lies with Verizon and its customers, since it is the performance of Verizon's Caller ID services or alternate billing services that is at issue.

[8] NCC does not address that it fails to allege that it offers a service to its customers under which it guarantees delivery of calling name and number information to other providers' end users' caller ID units, or a service under which it guarantees the ability to accept third party billed or collect calls. Verizon is unaware of any provider that tariffs such "services."

allege otherwise. To the extent that NCC really means that NCC contracts with a specific aggregator because Verizon purchases CNAM/LIDB data from that aggregator, that is NCC's choice, and is not the result of any compulsion by Verizon.

Finally, as mentioned above, NCC fails to allege facts demonstrating that Verizon's actions are in any sense ***unreasonable***, a requisite element of any claim under the statute. To the contrary, the Verified Complaint sets forth factual allegations that underscore the reasonableness of Verizon's conduct. It is not unreasonable for Verizon to purchase NCC's CNAM/LIDB data at the most favorable rates available. It is not unreasonable for Verizon to select where it houses and stores its own CNAM/LIDB data. There is no reason that NCC's desire to profit more handsomely should require Verizon to purchase NCC's CNAM/LIDB data at a rate higher than that at which Verizon can purchase it from a third party aggregator. To the extent that NCC argues otherwise, it would seem that NCC is engaging in unreasonable and anticompetitive conduct, not Verizon.

V. NCC's Highly Speculative and Hypothetical Claims Are Not Ripe and Must Therefore Be Dismissed

Both Staff and NCC gloss over the inarguable fact that NCC's claims are predicated upon NCC first building a database with which to host and store its customers' CNAM/LIDB data, as well as constructing the capability to transmit that data and bill for that service, and then ceasing to sell its CNAM/LIDB data to third party aggregators. NCC's allegations are therefore completely speculative, hypothetical, and not ripe for adjudication.

Both the Verified Complaint and the NCC Response concede that NCC presently lacks CNAM/LIDB hosting, storage and transmission capacity. *See, e.g.*, Verified

Complaint at ¶¶ 29-30; *see also* NCC Response at ¶ 5, 7, 8. Thus, even if Verizon agreed today to purchase NCC's CNAM/LIDB data directly from NCC, it would be impossible to do so.

Staff theorizes that NCC's claim is nonetheless ripe because NCC's grievance is "Verizon's refusal to purchase CNAM and LIDB from NCC." Staff Response at ¶ 11. Staff falls prey to NCC's efforts to focus on Verizon's decision not to purchase NCC's CNAM/LIDB data *directly from NCC, at the rates, terms and conditions proposed by NCC,* and ignores the allegations of the Verified Complaint and Verified Answer that confirm that Verizon *is already purchasing NCC's CNAM and LIDB data* through other means (*see* Verified Complaint at ¶ 24). Staff also fails to acknowledge that NCC presently has no means by which to sell its CNAM/LIDB data directly to Verizon anyway. Staff's theory is further predicated on the erroneous and illogical assumption that because Verizon is a large incumbent provider in Illinois, NCC customers would only call Verizon's Illinois customers. *See* Staff Response at ¶ 11. There is absolutely no basis for such a belief in the Verified Complaint or otherwise. Verizon's status as an incumbent local exchange carrier has no bearing on the geographic location of the parties called by NCC's customers. Moreover, any decision by NCC to remove its CNAM/LIDB data from third party aggregators would force carriers other than Verizon and outside of Verizon's service territory into direct agreements with NCC.

For its part, NCC acknowledges that (1) Verizon is currently purchasing NCC's CNAM/LIDB information from third parties, thereby precluding any current "impairment" of service to its customers; and (2) NCC is not presently storing or hosting its own customers' CNAM/LIDB data, and thus could not sell it today even if Verizon

wanted to buy it on NCC's terms. *See* Verified Complaint at ¶¶ 26-31; NCC Response at ¶¶ 5-8. To this extent, NCC's new assertion that it "has completed what it is required to do in order to allege a violation of the Act" (*see* NCC Response at ¶ 9) is contradicted by the allegations of the Verified Complaint, as well as other discussion in the NCC Response brief.

NCC also ignores the fact that unless it enters into so-called "direct agreements" to sell its CNAM/LIDB data to every local service provider across the country (not just in Illinois), it will still need to enter into agreements with third party aggregators of such data so that other carriers that, like Verizon, use such aggregators, can obtain NCC's CNAM/LIDB data. The Verified Complaint alleges that NCC is not currently hosting or storing this data itself, confirming that any other provider nationwide is buying NCC's CNAM/LIDB data, if at all, through third party vendors. This undermines NCC's insinuation that Verizon's decision not to buy NCC's CNAM/LIDB data under the rates, terms and conditions offered by NCC is the sole reason NCC is presently dealing with such third party vendors.

NCC also attempts to deflect the fact that a significant number of hypothetical, future events would have to occur before the alleged "harms" in the Verified Complaint could ever arise:

> 1. NCC would have to build a database to host and store its customers' CNAM/LIDB data;
>
> 2. NCC would have to stop selling its CNAM/LIDB data to third party aggregators;
>
> 3. Verizon would have to decline to purchase CNAM/LIDB data directly from NCC in the absence of any other competitive options to purchase it;

4. An NCC customer would have to call a Verizon customer in Illinois;

5. The NCC customer would have to have a published number, and must not have subscribed to NCC's Caller ID Blocking service;

6. The Verizon customer would have to have Caller ID service that provides both calling number and calling name information;

7. The Verizon customer would have to notice the absence of calling name information on his or her Caller ID unit;

8. The Verizon customer would have to conclude that the cause was the caller's service, not his own Verizon-provided Caller ID service;

9. The Verizon customer would have to answer the NCC customer's call;

10. The Verizon customer would have to comment to the NCC customer regarding the absence of Calling Name information on the Verizon customer's Caller ID unit;

11. The NCC customer would have to conclude that he/she was receiving inferior service from NCC; and

12. The NCC customer would have to complain to NCC.

In other words, a series of hypothetical events worthy of Rube Goldberg would have to occur before NCC could allege a claim under 220 ILCS 5/13-514.

NCC struggles to avoid dismissal by admitting that it does not presently host or store its own CNAM/LIDB database, but asserting that its claims are nevertheless ripe for adjudication because Verizon "is responsible for NCC's present inability to store and provide access to its own LIDB/CNAM information." *See* NCC Response at ¶ 8. Notably, NCC offers no citation to the Verified Complaint to support this assertion, nor can it "amend" the Verified Complaint with bald assertions made in the NCC Response. The Verified Complaint is devoid of any factual allegations (well-pled or otherwise) that support NCC's attempt to point to Verizon as the cause of NCC not hosting or storing its

own CNAM/LIDB data. Verizon obviously has absolutely no control over what NCC does with its end users' CNAM/LIDB information, nor does Verizon have any ability to bar NCC from constructing such a database to host and store that information. Any assertions to the contrary are wildly conclusory and unsupported by any specific factual allegations.

NCC finally resorts to hyperbole, arguing that "the entire competitive framework of the Act would implode" if the Commission accepted Verizon's ripeness argument, because "a telecommunications carrier could not challenge Verizon's refusal to enter into an interconnection agreement because the carrier would be merely asserting a future and hypothetical intent to provide services in Illinois." *See* NCC Response at ¶ 10. NCC's analogy is inapt. First, the federal Telecommunications Act of 1996 (the "Act") explicitly provides for competitive providers to seek negotiation and arbitration of their requests for future interconnection. *See* 47 U.S.C. § 252. Moreover, in the interconnection hypothetical, access to the incumbent's facilities is a necessary prerequisite to the competitor's ability to offer services. Such is not the case here. NCC needs nothing from Verizon in order to build, host and store NCC's own CNAM and LIDB information in NCC's own systems. What NCC really wants (not "needs") is a customer to purchase that data. NCC thus seeks to force Verizon to buy that data if and when NCC takes steps to house and sell it. NCC is merely an aspiring vendor of services that it cannot presently offer, seeking to compel an agreement to purchase them from a targeted purchaser that does not wish to buy them under the terms proposed. As such, NCC's claims are not ripe for adjudication, and the Commission must dismiss the Verified Complaint.

Conclusion

NCC seeks this Commission's assistance to strong-arm Verizon into buying a service that Verizon does not want to buy from NCC because it is available more inexpensively elsewhere. Ironically, in demanding this relief, NCC seeks to cloak itself in the provisions of the Illinois Public Utilities Act that are designed to *prevent* unfair and anticompetitive practices, not to *promote* them. No set of facts can sustain the Verified Complaint, because there is no legal authority to support NCC's efforts to force Verizon to buy a service that Verizon does not want to buy from NCC. The FCC has specifically recognized the competitive open market in which willing buyers can purchase CNAM/LIDB data. Any notion that the Commission may compel Verizon to purchase such data solely from NCC, under rates, terms and conditions less advantageous than those available in that open competitive market, is legally infirm.

Moreover, Verizon's decision to purchase from a competing provider the services NCC wishes to offer is legally permissible and wholly reasonable, and thus cannot constitute a violation of 220 ILCS 5/13-514. Finally, NCC's claims – predicated upon Verizon's alleged refusal to purchase a service that NCC is not even presently capable of providing – are purely hypothetical, speculative and not ripe for adjudication. For all of these reasons, dismissal of the Verified Complaint is warranted.

Dated: August 23, 2007

Verizon North Inc. and Verizon South Inc.

By: 

Deborah Kuhn
Assistant General Counsel
Verizon Great Lakes Region
Verizon
205 North Michigan Avenue, 11th Floor
Chicago, Illinois 60601
(312) 260-3326 (telephone)
(312) 470-5571 (facsimile)
deborah.kuhn@verizon.com

Of Counsel:

A. Randall Vogelzang
General Counsel
Verizon Great Lakes Region
Verizon
HQE02J27
600 Hidden Ridge
Irving, TX 75038
(972) 718-2170 (telephone)
(972) 718 0936 (facsimile)
randy.vogelzang@verizon.com

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

NORTH COUNTY COMMUNICATIONS CORPORATION	)	
Complainant,	)	
vs.	)	
	)	**Docket No. 07-0428**
VERIZON NORTH, INC. and VERIZON SOUTH, INC.	)	
Respondents	)	

NOTICE OF FILING

Please take notice that on August 23, 2007, I caused the foregoing "Verizon's Reply in Support of Its Motion to Dismiss" in the above-captioned matter to be filed electronically with the Illinois Commerce Commission via its E-Docket system.

Deborah Kuhn

CERTIFICATE OF SERVICE

I, Deborah Kuhn, certify that I caused the foregoing "Verizon's Reply in Support of Its Motion to Dismiss," together with a Notice of Filing, to be served upon all parties on the attached service list on this 23rd day of August, 2007, by electronic mail or by U.S. Mail, as noted.

Deborah Kuhn

SERVICE LIST
ICC Docket No. 07-0428

John D. Albers
Administrative Law Judge
Illinois Commerce Commission
527 East Capitol Ave.
Springfield, IL 62701
jalbers@icc.illinois.gov

James Zolnierek
Illinois Commerce Commission
527 East Capitol Ave.
Springfield, IL 62701
jzolnier@icc.illinois.gov

Joseph G. Dicks
Dicks & Workman, APC
750 "B" Street, Suite 2720
San Diego, CA 92101
jdicks@dicks-workmanlaw.com

Deborah Kuhn
Verizon
205 North Michigan Avenue, 11th Floor
Chicago, Illinois 60601
deborah.kuhn@verizon.com

Stefanie R. Glover
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago, IL 60601
sglover@icc.illinois.gov

A. Randall Vogelzang
Verizon
HQE02J27
600 Hidden Ridge
Irving, TX 75038
randy.vogelzang@verizon.com

Matthew L. Harvey
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago, IL 60601-3104
mharvey@icc.illinois.gov

Philip J. Wood Jr.
Vice President
Public Affairs Policy & Communications
Verizon North/South Inc.
1312 E. Empire St., ILLLARA
PO Box 2955
Bloomington, IL 61702
philip.j.wood.jr@verizon.com